Business and the Law

David E. Sanger

Joint Research: Barriers Fall

WHEN Adm. Bobby R. Inman first considered heading up a risky new joint research venture involving many of the nation's top computer and electronics companies, his lawyers immediately said the business plan reeked with antitrust problems.

"I was urged not to do it; I was told legal hurdles could be overwhelming," Admiral Inman, the former Deputy Director of Central Intelligence, said recently. "Naturally, I was very concerned at the outset, but I decided to go ahead anyway."

A scant two and a half years later, worries about putting competing engineers in the same research laboratory seem almost laughable. Last month, the Justice Department said that it had no problems with Admiral Inman's 20-company Microelectronics and Computer Technology Corporation.

More importantly, the Reagan Administration has openly invited more of the same: In the technology war against Japan, even a consortium involving virtually every American player in an industry could well pass antitrust scrutiny, said J. Paul McGrath, who recently left the post of Assistant Attorney General in charge of the antitrust division.

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"The message was clear, and it can't help but foster more cooperative R&D," said Larry W. Sumney, president of the Semiconductor Research Corporation, a consortium of 40 electronics companies that supports university research. "If we decide to pursue other avenues of joint development that once looked doubtful, it will now be possible."

For decades, research and development consortiums raised the same sort of problems that have plagued mergers and joint ventures within an industry. Companies joining together to develop new technologies, critics charged, could reduce competition by coordinating the pace of innovation. At worst, they could become exclusive clubs, keeping all of their expensive technological gems within the family.

Defenders of such ventures have long argued that society is best served by the economic efficiencies of teamwork, but until recently the argument carried little weight. In a 1964 case involving a joint venture, the Supreme Court said that "possible economies cannot be used as a defense to illegality."

At the same time, joint research and development has always been afforded a somewhat privileged, if precarious, niche in the complex world of antitrust law.

Antitrust regulators have said that while cooperation among competitors is usually suspect, it may be necessary if no individual company is willing to invest heavily in a risky new idea — a view that became increasingly popular as Japanese manufacturers began eating into the American market. In Japan, the Government not only allowed companies to work together, it paid them to do so. Quickly, a rising chorus called for a change in American antitrust rules.

"Remember, the precedents here were all set when society believed that the U.S. held — forgive the pun — all of the industrial chips," said Phillip E. Areeda, a professor at Harvard Law School and an expert on antitrust law. "Obviously, the psychological background is different today."

In response to pressure by Admiral Inman and others, the Justice Department has raced to refine its "rule of reason" approach in evaluating research and development consortiums.

"We've essentially come to the conclusion that there are only two types of arrangements that are troublesome," Mr. McGrath explained recently. "One is where the attempt is to limit innovation in an industry. The second is where there is an effort to limit what smaller competitors can do."

In the computer industry, Mr. McGrath insisted, there are no such risks. Conspicuously absent from membership in Admiral Inman's M.C.C. venture is the biggest player of them all, the International Business Machines Corporation. Even if I.B.M. were to join M.C.C., a situation Mr. McGrath said he was "not prepared to evaluate," hungry Japanese and European manufacturers would keep the marketplace honest. (I.B.M., for the record, says it is still not interested in joining M.C.C., in part because the company would have to divulge some proprietary research data to its competitors.)

Even supporters of the Justice Department's approach, however, concede that it leaves several problems unresolved. "I think there is agreement that you don't need as many centers of R&D to foster technology competition as you need companies in an industry to foster price competition," Mr. Areeda said. "But what is the right number? I don't know if anyone has the answer to that."

Moreover, some critics say that the mere presence of competition is not enough. It has to be competition with muscle.

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A consortium of the biggest American players, some legal experts argue, would hold the power to set industry standards that leave nonparticipants out in the cold. In the computer industry, for example, a consortium of manufacturers could agree on a common computer language, set of protocols or configuration of hardware.

The result could be the exclusion of a foreign competitor. And any competing company, American or foreign, that wanted to make a quantum leap with radically new software technology, for example, would have to risk ignoring the de facto standard.

On the other hand, many manufacturers, especially in the computer field, choose their own set of standards just to be different — not better. The result is greater expense for users of many different types of equipment.

With most of the antitrust hurdles now toppled, it may be the unwillingness of competitors to join hands, not the unwillingness of the courts, that blocks further cooperation.

"R&D is tremendously expensive, and it is getting more expensive every year," Mr. Sumney said. "The question now isn't how much joint research is legal, it's how much the industry can afford."

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INQUIRY

Topic: ARMS CONTROL

Bobby Inman, 54, directed the National Security Agency from 1977-81 and was deputy director of the CIA 1981-1982. He is now president of the Microelectronics and Computer Technology Corp. in Austin. He took part in last week's conference on international security and arms control in Atlanta. He was interviewed by USA TODAY's ***Mark Mayfield.***

Bobby Inman

You just can't sweep 'star wars' issue aside

USA TODAY: You participated in an arms control conference hosted by former presidents Jimmy Carter and Gerald Ford in Atlanta last week. Soviet leaders attended too. How did that go?

INMAN: It was a very lively series, though there was as much debate among the American participants as there was among the Soviet participants. It must have been fascinating for the Soviets to watch eight or nine different U.S. views — and to see the difference in how openly we argue different issues. If I were to stand back and look at it, as compared to past conferences, it's clear that the current administration's Strategic Defense Initiative has enlivened the discussion on strategic forces.

USA TODAY: What did the participants think about SDI — "star wars"?

INMAN: Whether people like the Strategic Defense Initiative or don't like it, it has forced a recognition of the rate at which technology is changing — that we are going to have to give thought to the question of strategic defense systems. That does not automatically mean weapons in space. There are, of course, proponents who would put an entire strategic defense system in space. There are others who would have it entirely land-based, entirely land and air.

USA TODAY: Is a defense against missiles really possible?

INMAN: As one looks out toward 1995, the ability to detect by a variety of sensors, to correlate those detections in seconds, to discriminate between warheads and decoys, and to target thousands of objects in seconds, might be doable. Because we cannot in fact say that is not going to occur — the technology is moving at such a rate that you have to say it could occur — then you have to begin thinking about what the form of strategic defenses might be. Either you ban it, or you plunge in to build a system unilaterally, or you try to negotiate with the other major power and do it in a collaborative manner.

USA TODAY: So the "star wars" issue was very much a part of the debate in Atlanta?

INMAN: It was a very significant topic. What it has at least done is to stir up those who spend a lot of time thinking about strategic issues — you just can't sweep it aside. You have to at least come back and examine the implications. Part of the reason you have to do that is because of changing technology.

USA TODAY: Was there much talk about Soviet leader Mikhail Gorbachev's offer to freeze medium-range missile deployment?

INMAN: With this group, there is a broader understanding of what the Soviet force level programs have already been. They have already exceeded what we had understood previously to be their intended ceiling on SS-20s. A freeze at this point in time would simply be a freeze at a level that's already larger than they originally said they were going to build.

USA TODAY: Do you think it's at all encouraging that Gorbachev made the offer?

INMAN: We don't do private negotiations in the modern world. Some of them take place around the table and the rest take place around the media, trying to shape public opinion. The other thing that we have rehearsed with this group is that the decision to deploy Pershing and cruise missiles to Europe was not a U.S. idea. That's so often forgotten in this country. It came from West Germany — from Helmut Schmidt, who was then chancellor. He first articulated it in late '77 or early '78 as a response to the changed situation when the Soviets deployed their SS-20s. The USA did not pick up on it for about a year.

USA TODAY: Did the Soviets in Atlanta seem to overlook that point?

INMAN: They detoured around it.

USA TODAY: Will the conference have any effect on the arms talks in Geneva?

INMAN: No. This really won't affect those at all. It gave the Soviets a chance to rehearse positions that they'll be doing there.

USA TODAY: Will "star wars" have much impact on the Geneva talks?

INMAN: You have to begin factoring that into arms control agreements — particularly if the view you take is that you want to approach it in a collaborative way. You've got to negotiate that before you're ever to a point of having it ready to do. I'm afraid the public image has been captured by that phrase "star wars." You think about space platforms zapping missiles in space. That may not ultimately be what a strategic defenses will look like at all. That might be an element of it, but it might be only a small element, or it might not even be part of it.

USA TODAY: Do you favor a summit meeting between President Reagan and Gorbachev?

INMAN: I was not in favor of a race to have a conference between President Reagan and General Secretary Leonid Brezhnev or Konstantin Chernenko. On the other hand, my own view is that there is some value in a meeting with Gorbachev. He is of a different generation. He will not be acting independently. This is also a time frame in which he will be forming his views for what could turn out to be 20 years of leadership. And therefore, given how limited a view he has had of the outside world, I think the best of all worlds would be a visit to this country. If that is not possible, I still see value in a meeting at a neutral site. I think it would be of more value to him and to the whole process if it were in this country.

USA TODAY: Why?

INMAN: The broader sense he gets of the pace of change in the rest of the world, the more he will have to contemplate

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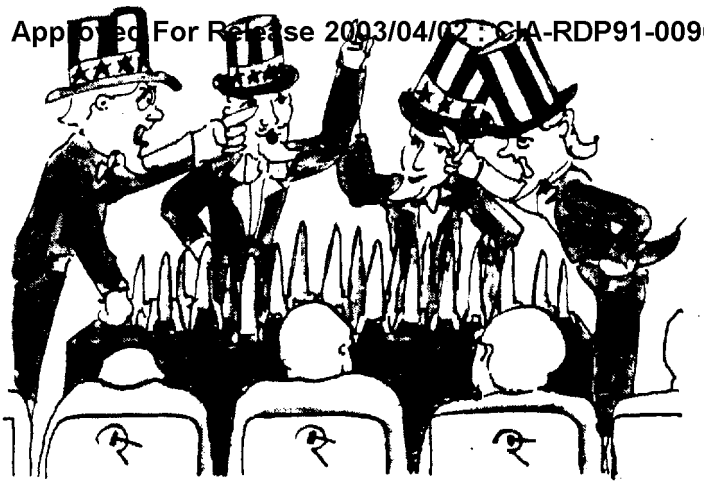

By Susan Harlan, USA TODAY

what has to happen in the Soviet Union to be able to adapt to the pace of change in the outside world — or get left further behind.

USA TODAY: Do you believe his personality will help in dealing with other nations?

INMAN: He's a skillful actor. He's going to play beautifully in the media. I don't see how the Soviets can pass up the kind of coup that's likely to bring off. What you're going to see now is that the Soviets are going to play this game with much greater skill. He will find in the dialogue with the president that Reagan's a great deal more pragmatic than the rhetoric might otherwise suggest.

USA TODAY: Were the talks with the Soviets in Atlanta as tough, say, as negotiating with the Soviets in Geneva?

INMAN: No, because you're not down to the stage of having to hammer out some kind of agreement. You aren't going to have to turn to the Senate to ratify the terms. We only dealt with problems like verification in passing. In negotiations, you really have to get out and do very precise things. But I think we don't do enough of the exposing of views.

USA TODAY: Was this conference unique?

INMAN: Clearly it's unique because two former presidents were involved. There is no comparison to other conferences, because in this one former presidents were able to say very directly how they reacted to certain situations.

USA TODAY: How valuable is a conference like this?

INMAN: The minimum level of the value of such a conference is that foreign representatives take home, both an understanding of the diversity of U.S. views, and the process by which U.S. views ultimately correlate.

USA TODAY: Do you see any other benefits to come out of all the talk about "star wars"?

INMAN: Perhaps this conference has helped get across to our Soviet colleagues that they don't end the discussion on strategic defenses purely by focusing on "no weapons in space." It is a much more complex problem. It's also given us the opportunity to view and ask questions about the fact that the Soviets have for years maintained an anti-ballistic defense of Moscow — fully allowed under the ABM treaty. And they have modernized it at very major costs and have maintained for years a very viable research program looking at additional weapons for upgrading their ABM system. So they can't have it both ways — saying there's no value for ABMs and yet justifying spending the limit the treaty system has now authorized.

USA TODAY: Is there a way to strike a balance of power between the two countries?

INMAN: What we have difficulty in reaching agreement on is: What is a balance? While there is no insistence from at least the majority of U.S. participants that you have to have an absolute balance, or that you've got to have superiority in nuclear forces if you are inferior in conventional forces — you cannot foreclose first use of nuclear weapons as the way you protect yourself against that conventional superiority. If a decision were made in the West to build conventional forces that fully matched the Soviets, then you could enter into a discussion on "no first use." It would be very unwise to do that if you did not have the commitment or any of the building actually being done. That's not just an investment by the USA. That clearly would have to be our allies in Western Europe willing to spend the kinds of dollars, francs, pounds for conventional forces.

Leaders debate 'star wars'

More than 60 leaders from around the world, including a delegation from the Soviet Union, debated major arms control issues last week in Atlanta at a conference hosted by former presidents Jimmy Carter and Gerald Ford. Carter said he hoped the conference left the Soviet and U.S. participants with a better understanding of the issues that separate them.

The two major areas of debate included:

■ The USA's deployment of Pershing 2 and cruise missiles in Europe. U.S. officials say the missiles are needed to offset a Soviet buildup of medium-range missiles. The Soviets say the deployment represents an escalation of the arms race.

■ President Reagan's Strategic Defense Initiative, sometimes called "star wars," which aims to develop a defense against nuclear missiles. The Soviets claim that Reagan is trying to militarize space. Many U.S. experts counter that the Soviets are hard at work on their own "star wars" program.

Source: Conference on International Arms Control, Emory University

CHRISTIAN SCIENCE MONITOR
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US spy agencies expand intelligence efforts; still face clamor for better data

By Peter Grier
Staff writer of The Christian Science Monitor

Washington

How good are US intelligence agencies at figuring out what goes on in the world?

After all, information on such things as Soviet SS-20 missile launchers and the intentions of Islamic militia often greatly influences United States officials pondering hard decisions.

The quality of US intelligence assessments declined during the late 1960s and early '70s, former and current intelligence officials say. But in recent years the perceptive ability of intelligence agencies has been markedly strengthened, these sources assert.

"We're better, we work on a broader range of subjects today. We still have imperfections we're working on," says a senior intelligence source.

Current Washington debate over the data-producing effectiveness of the CIA, the Defense Intelligence Agency (DIA), and other US intelligence arms in many ways marks the closing of a circle.

In the late '60s and early '70s, the political climate and revelations of controversial spy operations put US intelligence agencies into disrepute. Congress set up oversight committees to keep a close eye on the CIA, and intelligence budgets were slashed. At one point, the number of CIA analysts studying the Soviet economy fell to 50, from a high of 200.

Sometime during the Carter administration, things began to change. Intelligence budgets quietly started to grow again.

"This turnaround was led in some degree by Congress. It accelerated in a major way in the early '80s," said Adm. Bobby Inman, former deputy director of the CIA, in a recent interview.

But with this rejuvenation have come demands for better performance. Policymakers today want more detail in their intelligence reports than ever before. When a terrorist bomb leveled the US Marine barracks in Lebanon, for instance, some members of Congress complained of an intelligence failure, saying the marines should have been warned about a pending attack.

Demanding such specificity may be asking for too much, a House Intelligence Committee report concludes. While the CIA didn't pinpoint the coming attack, it did warn repeatedly of possible vehicle-bomb attacks in Lebanon, official sources say.

Overall, the ability of US intelligence to decipher world events has been greatly strengthened in recent years, according to government officials. With bigger budgets have come more analysts. Contacts with outside experts have been expanded. Training standards and travel time for those who pore each day over raw intelligence data have been vastly increased, these sources say.

The number of long-term reports, dealing with subjects such as possible Soviet weapons of the future, has been increased and will top 700 this year. National Intelligence Estimates, large reports with contributions from numerous agencies, now feature dissenting opinions in the body of the text.

"We're trying to be more forthcoming with policy people about the quality of our sources, and the level of confidence in our judgments," a senior intelligence official says.

Critics are skeptical of the effects of these reforms. Allan Goodman, a former high CIA official who is now a Georgetown University associate dean, feels recent changes have had only a marginal effect on the quality of intelligence.

The US intelligence community, Mr. Goodman complains, does not study its failures. Frank rating of sources is done only in the most important reports, he says, and Central Intelligence Director William Casey has altered reports to fit his preconceived political views.

Congress, for its part, stands in between these poles of opinion.

A House Intelligence Committee report, issued earlier this year, concluded that "a number of steps have been taken to improve the quality of intelligence. Nevertheless, shortcomings in analysis and collection continue to appear."

Analysis of the rate of growth of Soviet defense spending is one subject that in particular has recently caused problems in the US intelligence community.

The CIA estimates that Soviet spending on weapons has been relatively flat in recent years, around 2 percent annually. The DIA believes it has been between 5 and 8 percent.

But focusing on this number may magnify the differences between the agencies, some say.

Still, "there are relatively few disagreements on what the Soviets have deployed in the strategic arena," says one official.